

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No 6:18-bk-7462-CCJ
Chapter 13

JUAN CARLOS ORTIZ
MICHELLE FRANCINE ORTIZ
Debtors.

MOTION FOR RELIEF FROM STAY

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at George C. Young Courthouse, 400 West Washington Street, Suite 5100, Orlando, FL 32801 and serve a copy on the movant's attorney, Robert H. Pflueger, Esquire, 377 Maitland Avenue, Suite 1002, Altamonte Springs, FL 32701, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COMES NOW, Cypress Springs Owners Association, Inc, ("the Movant"), and requests relief from the automatic stay to permit movant to complete the foreclosure proceeding that had been commenced with respect to the Debtor's homestead property and also to permit movant to take title to that property as a result of the completed foreclosure proceedings and for cause would show the Court as follows:


1. On or about June 21, 2018, Movant filed a complaint to foreclose a Homeowners Association lien on the debtors homestead property.
2. The subject property is owned by Juan Carlos Ortiz and Michelle Francine Ortiz ("the Debtors").
3. The property which is the subject of this motion and subject to Movant's interest is described as:

Lot 66 of Villas at Cypress Springs, according to the plat thereof, as recorded in Plat Book 66 at Pages 1-4, Public Records of Orange County, Florida and has a street address of 10128 Shadow Leaf Court, Orlando, FL 32825.
4. On or about October 11, 2018, the Orange County Circuit Court issued a Final Judgment of Foreclosure and awarded attorney's fees, setting the sale date of the property for November 27, 2018 at 11:00am. A copy of the Final Judgment is attached as "Exhibit A".
5. In the Final Judgment of Foreclosure, the Circuit Court specifically stated "the right of redemption shall terminate upon issuance of the Certificate of Sale as per Florida Statute 45.0315". See Final Judgment of Foreclosure at Page 3 to 4, Paragraph 9.
6. The sale was held in accordance with Florida law and on November 28, 2018, the Circuit Court issued a Certificate of Sale attached as "Exhibit B".

7. On November 30, 2018, the Debtors filed a Chapter 13 bankruptcy proceeding in the Middle District of Florida, Case No. 6:18-bk-7462. This case was filed 2 days after the Certificate of Sale was issued.
8. According to Florida Statute 45.0315, the issuance of the Certificate of Sale terminated any rights of redemption. A copy of Florida Statute 45.0315 is attached as “Exhibit C”.
9. It is well settled bankruptcy law that the issuance of the Certificate of Sale terminates the rights of a chapter 13 debtor to reinstate the mortgage. See *In Re: Donald F. Catalano*, Case No. 6:13-bk-01417-KSJ “Exhibit D”, where Judge Jennemann held the issuance of the Certificate of Sale cuts off a debtor’s right in the collateral. See also attached “Exhibit E”, *In Re: Jaav*, 186 B.R. 148, 149 (Bank M.D. Fla 1995), which was an almost identical fact pattern to this case. In *Jaav*, the question is the case was whether the debtor’s right to cure the default and reinstate the mortgage terminated as a result of the status of the foreclosure proceeding. In *Jaav*, the court found the mortgagor’s debtor’s right of redemption expired with the filing of the Certificate of Sale; further, the court held that an objection to sale filed before the Certificate of Title was issued did not affect or cloud the title of the purchase in any manner (*id* at 153-54). The court went on to hold that a Certificate of Sale must be set aside for the mortgagor / debtor to have any right to acquire the property. The debtor was not permitted to cure and reinstate or redeem mortgage through a Chapter 13 Plan (*id* 154-55).

WHEREFORE, Movant requests the Court enter an order modifying the automatic stay under 11 U.S.C. 362(d) to permit Movant to take any and all steps necessary to exercise all rights it may have to gain possession of said property and that Movant have such other and further relief as is just. Further, the Movant requests that the 10-day stay period imposed by F.R.B.P. 4001(a)(3) be waived and requests an order be entered to permit them to take title to the property as a result of the completed foreclosure proceedings.

Dated: January 2, 2019.

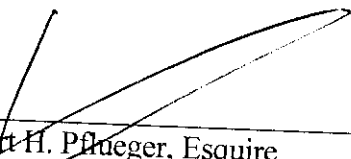


Robert H. Pflueger, Esquire
Attorney For Movant
Florida Bar No.: 333794

C E R T I F I C A T E O F S E R V I C E

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or electronic delivery on this _____ day of January, 2019, to:

Juan Carlos Ortiz and Michelle Francine Ortiz, 10128 Shadow Leaf Ct, Orlando, FL 32825;
Jeffrey S. Badgley, Esquire, 801 N Magnolia Ave, Suite 107, Orlando, FL 32803;
Laurie K Weatherford, Trustee, PO Box 3450, Winter Park, FL 32790;
U.S. Trustee, George C. Young Federal Bldg, 400 W Washington St, Suite 1100, Orlando, FL 32801.



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